JUDGMENT OF THE COURT (Grand Chamber)

20 June 2022 (*)

(Reference for a preliminary ruling – Judicial cooperation in civil and commercial matters – Regulation (EC) No 44/2001 – Recognition of a judgment given in another Member State – Grounds for non-recognition – Article 34(3) – Judgment irreconcilable with a judgment given in a dispute between the same parties in the Member State in which recognition is sought – Conditions – Whether the prior judgment entered in the terms of an arbitral award complies with the provisions and fundamental objectives of Regulation (EC) No 44/2001 – Article 34(1) – Recognition manifestly contrary to public policy in the Member State in which recognition is sought – Conditions)

In Case C-700/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the High Court of Justice (England & Wales), Queen's Bench Division (Commercial Court) (United Kingdom), made by decision of 21 December 2020, received at the Court on 22 December 2020, in the proceedings

London Steam-Ship Owners' Mutual Insurance Association Limited

v

Kingdom of Spain,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, L. Bay Larsen, Vice-President, K. Jürimäe, C. Lycourgos, E. Regan, I. Jarukaitis and N. Jääskinen, Presidents of Chambers, M. Ilešič, J.-C. Bonichot, M. Safjan (Rapporteur), A. Kumin, M.L. Arastey Sahún, M. Gavalec, Z. Csehi and O. Spineanu-Matei, Judges,

Advocate General: A.M. Collins,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 31 January 2022,

after considering the observations submitted on behalf of:

– London Steam-Ship Owners' Mutual Insurance Association Limited, by A. Song and M. Volikas, Solicitors, A. Thompson and C. Tan, Barristers, C. Hancock QC and T. de la Mare QC,

– the United Kingdom Government, by L. Baxter, B. Kennelly and F. Shibli, acting as Agents,

– the German Government, by J. Möller, U. Bartl and M. Hellmann, acting as Agents,

– the Spanish Government, by S. Centeno Huerta, A. Gavela Llopis, S. Jiménez García and M.J. Ruiz Sánchez, acting as Agents,

– the French Government, by A. Daniel and A.-L. Desjonquères, acting as Agents,

– the Polish Government, by B. Majczyna and S. Żyrek, acting as Agents,

– the Swiss Government, by M. Schöll, acting as Agent,

– the European Commission, by C. Ladenburger, X. Lewis and S. Noë, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 5 May 2022,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 1(2)(d) and Article 34(1) and (3) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1).

2 The reference has been made in proceedings between London Steam-Ship Owners' Mutual Association Limited ('the London P&I Club') and the Kingdom of Spain concerning the recognition in the United Kingdom of a judgment given by a Spanish court.

Legal context

European Union law

Regulation No 44/2001

3 Recital 16 of Regulation No 44/2001 states:

'Mutual trust in the administration of justice in the [European Union] justifies judgments given in a Member State being recognised automatically without the need for any procedure except in cases of dispute.'

4 Article 1(1) and (2) of that regulation provides:

'1. This Regulation shall apply in civil and commercial matters whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters.

2. The Regulation shall not apply to:

…

(d) arbitration.'

5 Chapter II of Regulation No 44/2001, entitled 'Jurisdiction', is divided into 10 sections.

6 Section 3 of that chapter concerns jurisdiction in matters relating to insurance.

7 Within that section, Article 13 of that regulation provides:

'The provisions of this Section may be departed from only by an agreement:

…

5. which relates to a contract of insurance in so far as it covers one or more of the risks set out in Article 14.'

8 Under Article 14 of that regulation, which is also in that section:

‘The following are the risks referred to in Article 13(5):

1. any loss of or damage to:

   (a) seagoing ships, installations situated offshore or on the high seas, or aircraft, arising from perils which relate to their use for commercial purposes;

   …

2. any liability, other than for bodily injury to passengers or loss of or damage to their baggage:

   (a) arising out of the use or operation of ships, installations or aircraft as referred to in point 1(a) in so far as, in respect of the latter, the law of the Member State in which such aircraft are registered does not prohibit agreements on jurisdiction regarding insurance of such risks;

   …’

9 Section 7 of Chapter II of Regulation No 44/2001 concerns the prorogation of jurisdiction and contains, inter alia, Article 23 of that regulation, paragraph 1 of which provides:

‘If the parties, one or more of whom is domiciled in a Member State, have agreed that a court or the courts of a Member State are to have jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular legal relationship, that court or those courts shall have jurisdiction. Such jurisdiction shall be exclusive unless the parties have agreed otherwise. Such an agreement conferring jurisdiction shall be either:

(a) in writing or evidenced in writing; or

(b) in a form which accords with practices which the parties have established between themselves; or

(c) in international trade or commerce, in a form which accords with a usage of which the parties are or ought to have been aware and which in such trade or commerce is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade or commerce concerned.’

10 Section 9 of that chapter, relating to *lis pendens* and related actions, includes, inter alia, Article 27 of that regulation, which provides:

‘1. Where proceedings involving the same cause of action and between the same parties are brought in the courts of different Member States, any court other than the court first seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.

2. Where the jurisdiction of the court first seised is established, any court other than the court first seised shall decline jurisdiction in favour of that court.’

11 Chapter III of Regulation No 44/2001, entitled ‘Recognition and enforcement’, comprises Articles 32 to 56 of that regulation.

12 Article 32 of that regulation provides:

‘For the purposes of this Regulation, “judgment” means any judgment given by a court or tribunal of a Member State, whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as the determination of costs or expenses by an officer of the court.’

13 Under Article 33 of that regulation:

‘1. A judgment given in a Member State shall be recognised in the other Member States without any special procedure being required.

2. Any interested party who raises the recognition of a judgment as the principal issue in a dispute may, in accordance with the procedures provided for in Sections 2 and 3 of this Chapter, apply for a decision that the judgment be recognised.

3. If the outcome of proceedings in a court of a Member State depends on the determination of an incidental question of recognition that court shall have jurisdiction over that question.’

14 Article 34 of that regulation provides:

‘A judgment shall not be recognised:

1. if such recognition is manifestly contrary to public policy in the Member State in which recognition is sought;

…

3. if it is irreconcilable with a judgment given in a dispute between the same parties in the Member State in which recognition is sought;

…’

15 Article 35 of Regulation No 44/2001 is worded as follows:

‘1. Moreover, a judgment shall not be recognised if it conflicts with Sections 3, 4 or 6 of Chapter II, or in a case provided for in Article 72.

2. In its examination of the grounds of jurisdiction referred to in the foregoing paragraph, the court or authority applied to shall be bound by the findings of fact on which the court of the Member State of origin based its jurisdiction.

3. Subject to … paragraph 1, the jurisdiction of the court of the Member State of origin may not be reviewed. The test of public policy referred to in point 1 of Article 34 may not be applied to the rules relating to jurisdiction.’

16 Under Article 43(1) of that regulation:

‘The decision on the application for a declaration of enforceability may be appealed against by either party.’

Regulation (EU) No 1215/2012

17 Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2012 L 351, p. 1) repealed and replaced Regulation No 44/2001.

18 Recital 12 of Regulation No 1215/2012 is worded as follows:

‘This Regulation should not apply to arbitration. Nothing in this Regulation should prevent the courts of a Member State, when seised of an action in a matter in respect of which the parties have entered into an arbitration agreement, from referring the parties to arbitration, from staying or dismissing the proceedings, or from examining whether the arbitration agreement is null and void, inoperative or incapable of being performed, in accordance with their national law.

A ruling given by a court of a Member State as to whether or not an arbitration agreement is null and void, inoperative or incapable of being performed should not be subject to the rules of recognition and enforcement laid down in this Regulation, regardless of whether the court decided on this as a principal issue or as an incidental question.

On the other hand, where a court of a Member State, exercising jurisdiction under this Regulation or under national law, has determined that an arbitration agreement is null and void, inoperative or incapable of being performed, this should not preclude that court's judgment on the substance of the matter from being recognised or, as the case may be, enforced in accordance with this Regulation. This should be without prejudice to the competence of the courts of the Member States to decide on the recognition and enforcement of arbitral awards in accordance with the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York on 10 June 1958 [(*United Nations Treaty Series*, Vol. 330, p. 3)] ("the 1958 New York Convention"), which takes precedence over this Regulation.

This Regulation should not apply to any action or ancillary proceedings relating to, in particular, the establishment of an arbitral tribunal, the powers of arbitrators, the conduct of an arbitration procedure or any other aspects of such a procedure, nor to any action or judgment concerning the annulment, review, appeal, recognition or enforcement of an arbitral award.'

19 According to Article 73(2) of that regulation:

'This Regulation shall not affect the application of the 1958 New York Convention.'

United Kingdom law

20 Section 66 of the Arbitration Act 1996, entitled 'Enforcement of the award', provides that:

'(1) An award made by the tribunal pursuant to an arbitration agreement may, by leave of the court, be enforced in the same manner as a judgment or order of the court to the same effect.

(2) Where leave is so given, judgment may be entered in terms of the award.

(3) Leave to enforce an award shall not be given where, or to the extent that, the person against whom it is sought to be enforced shows that the tribunal lacked substantive jurisdiction to make the award.

The right to raise such an objection may have been lost (see section 73).

(4) Nothing in this section affects the recognition or enforcement of an award under any other enactment or rule of law, in particular under Part II of the Arbitration Act 1950 (enforcement of awards under Geneva Convention) or the provisions of Part III of this Act relating to the recognition and enforcement of awards under the [1958] New York Convention or by an action on the award.'

21 Sections 67 to 72 of the Arbitration Act 1996 set out the conditions under which the parties to arbitration proceedings may challenge the jurisdiction of the arbitral tribunal, the conduct of the proceedings and the merits of the award.

22 Section 73 of that act, entitled 'Loss of right to object', provides:

'(1) If a party to arbitral proceedings takes part, or continues to take part, in the proceedings without making, either forthwith or within such time as is allowed by the arbitration agreement or the tribunal or by any provision of this Part, any objection—

(a) that the tribunal lacks substantive jurisdiction,

(b) that the proceedings have been improperly conducted,

(c) that there has been a failure to comply with the arbitration agreement or with any provision of this Part, or

(d) that there has been any other irregularity affecting the tribunal or the proceedings,

he may not raise that objection later, before the tribunal or the court, unless he shows that, at the time he took part or continued to take part in the proceedings, he did not know and could not with reasonable diligence have discovered the grounds for the objection.

(2) Where the arbitral tribunal rules that it has substantive jurisdiction and a party to arbitral proceedings who could have questioned that ruling—

(a) by any available arbitral process of appeal or review, or

(b) by challenging the award,

does not do so, or does not do so within the time allowed by the arbitration agreement or any provision of this Part, he may not object later to the tribunal's substantive jurisdiction on any ground which was the subject of that ruling.'

Spanish law

23 Article 117 of the Código Penal (Criminal Code; 'the Spanish Criminal Code') provides:

'Insurers which have assumed the risk of financial liabilities arising from the use or exploitation of any property, industry, undertaking or activity, in the case where the event constituting the risk insured materialises as a result of a circumstance provided for in this Code, shall incur direct civil liability up to the limit of the compensation laid down by law or by agreement, without prejudice to the right of recovery against the person concerned.'

The dispute in the main proceedings and the questions referred for a preliminary ruling

24 In November 2002, the oil tanker *Prestige* sank off the coast of Spain, causing significant environmental damage to the Spanish and French coastlines. A criminal investigation was subsequently initiated in Spain at the end of 2002 against, amongst others, the master of that vessel.

25 Following the conclusion of that investigation, the case was referred before the Audiencia Provincial de A Coruña (Provincial Court, Corunna, Spain) and several legal entities, including the Spanish State, brought civil claims, in the context of the criminal proceedings, against the master of the *Prestige*, against its owners and, pursuant to Article 117 of the Spanish Criminal Code which provides for a right of direct action, against the London P&I Club, the liability insurer of both the vessel and its owners. Although it deposited a sum with the Spanish criminal courts seised of the case on 16 June 2003 in respect of its liability for damage that might be caused by the sinking, the London P&I Club did not enter an appearance in those proceedings.

26 On 16 January 2012, that is to say, after the introduction of those civil claims, the London P&I Club commenced arbitration proceedings in London (United Kingdom) seeking a declaration that, pursuant to the arbitration clause in the insurance contract concluded with the owners of the *Prestige*, the Kingdom of Spain was required to pursue its claims under Article 117 of the Spanish Criminal Code in those arbitration proceedings. The London P&I Club also sought a declaration that it could not be liable to the Kingdom of Spain in respect of those claims, since the insurance contract stipulated that, in accordance with the 'pay to be paid' clause, the insured party must first pay the injured party the compensation due before recovery from the insurer is permissible. The Kingdom of Spain did not participate in the arbitration proceedings, although it was invited to do so by the arbitral tribunal.

27 By an award published on 13 February 2013, the arbitral tribunal held that, since the Kingdom of Spain's claims were contractual in nature under English conflict of laws principles, the law to be applied to the contract was English law. According to the arbitral tribunal, the Kingdom of Spain could not therefore rely on the owner's contractual rights and yet not respect both the arbitration clause and the 'pay to be paid' clause. The arbitral tribunal thus concluded that the claims for damages brought by the Kingdom of Spain before the Spanish courts should have been referred to arbitration in London, that, in the absence of the prior payment of the damages by the owners of the vessel to the Kingdom of Spain, the London P&I Club could not be liable to the Kingdom of Spain and that, in any event, in accordance with the terms of the insurance contract, the London P&I Club's liability could not exceed 1 billion United States dollars (USD) (approximately EUR 900 000 000).

28 In March 2013, the London P&I Club applied to the High Court of Justice (England & Wales), Queen's Bench Division (Commercial Court) (United Kingdom), under Section 66(1) and (2) of the Arbitration Act 1996, for leave to enforce the arbitral award in that jurisdiction in the same manner as a judgment or order and for a judgment to be entered in the terms of that award. The Kingdom of Spain opposed that application and requested that court to set aside that award or to declare that it was of no effect pursuant to Section 67 or Section 72 of the Arbitration Act 1996. The Kingdom of Spain also argued that the referring court should not exercise its discretion to enter a judgment in terms of the award.

29 By order of 22 October 2013, following a trial during which factual and expert evidence of Spanish law were heard, the High Court of Justice (England & Wales), Queen's Bench Division (Commercial Court), granted the London P&I Club leave to enforce the arbitral award of 13 February 2013. On that same date, that court handed down a judgment in the terms of the award.

30 The Kingdom of Spain brought an appeal against that order before the Court of Appeal (England & Wales) (Civil Division) (United Kingdom). By judgment of 1 April 2015, that court dismissed the appeal.

31 By judgment of 13 November 2013 delivered in criminal proceedings before the Spanish courts, the Audiencia Provincial de A Coruña (Provincial Court, Corunna) acquitted the master of the *Prestige* as regards the charges relating to offences against the environment, convicted him of the offence of serious disobedience towards the authorities and found that he was not liable in respect of the damage caused by the oil spill on the basis that there was no causal link between the offence of disobedience and that damage. It did not rule on the civil liability of the owners of the *Prestige* or that of the London P&I Club.

32 Several parties brought an appeal on a point of law against that judgment before the Tribunal Supremo (Supreme Court, Spain). By judgment of 14 January 2016, that court acquitted the master of the *Prestige* of the offence of serious disobedience of the authorities but convicted him of the offence of negligence against the environment. It held the master and owners of the *Prestige* and – pursuant to Article 117 of the Spanish Penal Code – the London P&I Club liable in respect of the civil claims, subject, as regards the latter, to the contractual limit of liability of USD 1 billion. Finally, it remitted the case to the Audiencia Provincial de A Coruña (Provincial Court, Corunna) for determination of the quantum of the respective liabilities of the defendants in the Spanish proceedings.

33 By judgment of 15 November 2017, rectified on 11 January 2018, the Audiencia Provincial de A Coruña (Provincial Court, Corunna) held the master of the *Prestige*, its owners and the London P&I Club liable to over 200 separate parties, including the Spanish State, subject, in the case of the London P&I Club, to the contractual limit of liability of USD 1 billion. Following an appeal on a point of law against that judgment, that judgment was upheld, in essence, by a judgment of the Tribunal Supremo (Supreme Court) of 19 December 2018.

34 By order of 1 March 2019, the Audiencia Provincial de A Coruña (Provincial Court, Corunna) set out the amounts that each of the claimants was entitled to obtain from the respective defendants. It held inter alia that that those defendants were liable to the Spanish State in the sum of approximately EUR 2.3 billion, subject in the case of the London P&I Club to the limit of EUR 855 million.

35 On 25 March 2019, the Kingdom of Spain made an application to the High Court of Justice (England & Wales), Queen's Bench Division (United Kingdom), on the basis of Article 33 of Regulation No 44/2001, for recognition in the United Kingdom of the enforcement order of 1 March 2019. That court granted that application by order of 28 May 2019.

36 On 26 June 2019, the London P&I Club lodged an appeal against that order before the referring court under Article 43 of Regulation No 44/2001.

37 In support of its appeal, the London P&I Club submitted, first, that the enforcement order of 1 March 2019 is irreconcilable, within the meaning of Article 34(3) of Regulation No 44/2001, with the order and judgment of 22 October 2013 delivered pursuant to Section 66 of the Arbitration Act 1996 and confirmed on 1 April 2015 by the Court of Appeal (England & Wales) (Civil Division). Secondly and in any event, it argued, pursuant to Article 34(1) of that regulation, that the recognition or enforcement of that enforcement order would be manifestly contrary to public policy, inter alia with regard to the principle of *res judicata*.

38 The Kingdom of Spain contended that the appeal should be dismissed.

39 The referring court considers that the case in the main proceedings raises the question, first, whether a judgment such as its judgment given under Section 66 of the Arbitration Act 1996 qualifies as a 'judgment', within the meaning of Article 34(3) of Regulation No 44/2001, where that court has not itself heard all the substantive merits of the dispute which had been heard by the arbitration tribunal. Secondly, it has doubts whether a judgment falling outside the material scope of that regulation by reason of the exception concerning arbitration set out in Article 1(2)(d) thereof may nevertheless be relied on to prevent recognition and enforcement of a judgment from another Member State pursuant to Article 34(3) of that regulation. Thirdly, that court questions whether, assuming that Article 34(3) of Regulation No 44/2001 does not apply, it is permissible to rely on Article 34(1) thereof as a ground for refusing recognition or enforcement of a judgment from another Member State on the basis that such recognition or enforcement would disregard the force of *res judicata* acquired by a domestic arbitral award or a judgment entered in the terms of such an award.

40 In those circumstances, the High Court of Justice (England & Wales), Queen's Bench Division (Commercial Court), decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Given the nature of the issues which the national court is required to determine in deciding whether to enter judgment in the terms of an award under Section 66 of the Arbitration Act 1996, is a judgment granted pursuant to that provision capable of constituting a relevant "judgment" of the Member State in which recognition is sought for the purposes of Article 34(3) of [Regulation No 44/2001]?

(2) Given that a judgment entered in the terms of an award, such as a judgment under Section 66 of the Arbitration Act 1996, is a judgment falling outside the material scope of Regulation No 44/2001 by reason of the Article 1(2)(d) arbitration exception, is such a judgment capable of constituting a relevant "judgment" of the Member State in which recognition is sought for the purposes of Article 34(3) of [that] [r]egulation?

(3) On the hypothesis that Article 34(3) of Regulation No 44/2001 does not apply, if recognition and enforcement of a judgment of another Member State would be contrary to domestic public policy on the grounds that it would violate the principle of *res judicata* by reason of a prior domestic arbitration award or a prior judgment entered in the terms of the award granted by the court of the Member State in which recognition is sought, is it permissible to rely on Article 34(1) of Regulation No 44/2001 as a ground of refusing recognition or enforcement or [does Article] 34(3) and (4) of [that] [r]egulation provide the exhaustive grounds by which *res judicata* and/or irreconcilability can prevent recognition and enforcement of a Regulation judgment?'

Consideration of the questions referred

The first and second questions

41 By its first and second questions, which should be examined together, the referring court asks, in essence, whether Article 34(3) of Regulation No 44/2001 must be interpreted as meaning that a judgment entered by a court of a Member State in the terms of an arbitral award may constitute a 'judgment', within the meaning of that provision, which prevents the recognition, in that Member State, of a judgment given by a court in another Member State if those two judgments are irreconcilable.

42 As a preliminary point, it must be noted that, since Regulation No 1215/2012 repealed and replaced Regulation No 44/2001, which itself replaced the Convention of 27 September 1968 on jurisdiction and enforcement of judgments in civil and commercial matters (OJ 1972 L 299, p. 32), as amended by successive conventions on the accession of new Member States to that convention, the Court's interpretation of the provisions of one of those legal instruments also applies to those of the others, whenever those provisions may be regarded as equivalent (see, to that effect, judgment of 15 July 2021, *Volvo and Others*, C-30/20, EU:C:2021:604, paragraph 28).

43 Such is the case with Article 1(2)(d) of each of those two regulations and Article 1(4) of that convention, which exclude arbitration from the scope of those legal instruments.

44 That exclusion covers arbitration in its entirety, including proceedings brought before national courts (judgment of 25 July 1991, *Rich*, C-190/89, EU:C:1991:319, paragraph 18).

45 Proceedings for the recognition and enforcement of an arbitral award are therefore covered not by Regulation No 44/2001 but by the national and international law applicable in the Member State in which recognition and enforcement are sought (see, to that effect, judgment of 13 May 2015, *Gazprom*, C-536/13, EU:C:2015:316, paragraph 41).

46 Likewise, recital 12 of Regulation No 1215/2012 now emphasises that that regulation does not apply to any action or judgment concerning the recognition or enforcement of an arbitral award.

47 It follows that a judgment entered in the terms of an arbitral award is caught by the arbitration exclusion laid down in Article 1(2)(d) of Regulation No 44/2001 and that it cannot, therefore, enjoy mutual recognition between the Member States and circulate within the EU judicial area in accordance with the provisions of that regulation.

48 That being said, such a judgment is capable of being regarded as a 'judgment', within the meaning of Article 34(3) of Regulation No 44/2001.

49 In that regard, in the first place, it follows from the broad definition of the concept of 'judgment' set out in Article 32 of Regulation No 44/2001 that that concept covers any judgment given by a court of a Member State, without its being necessary to draw a distinction according to the content of the judgment in question, provided that it has been, or has been capable of being, the subject, in that Member State of origin and under various procedures, of an inquiry in adversarial proceedings (see, to that effect, judgment of 7 April 2022, *H Limited*, C-568/20, EU:C:2022:264, paragraphs 24 and 26 and the case-law cited). Moreover, that broad definition applies to all the provisions of that regulation in which that term is used, including Article 34(3) thereof (see, by analogy, judgment of 2 June 1994, *Solo Kleinmotoren*, C-414/92, EU:C:1994:221, paragraph 20).

50 That interpretation of the concept of 'judgment', set out in Article 34(3) of Regulation No 44/2001, is supported by the purpose of that provision, namely to protect the integrity of a Member State's internal legal order and ensure that its rule of law is not disturbed by the obligation to recognise a judgment from another Member State which is inconsistent with a decision given, in a dispute between the same parties,

by its own courts (see, by analogy, judgment of 2 June 1994, *Solo Kleinmotoren*, C-414/92, EU:C:1994:221, paragraph 21).

51 In the second place, it is apparent from the Court's case-law that the exclusion of a matter from the scope of Regulation No 44/2001 does not preclude a judgment relating to that matter from coming within the scope of Article 34(3) of that regulation and, accordingly, preventing the recognition of a judgment given in another Member State with which it is irreconcilable.

52 Thus the Court has inter alia regarded a judgment of a court of the Member State in which recognition is sought which – since it related to the status of natural persons – did not fall within the scope of the convention referred to in paragraph 42 above as irreconcilable with a judgment from another Member State, since those two judgments entailed legal consequences which were mutually exclusive (see, to that effect, judgment of 4 February 1988, *Hoffmann*, 145/86, EU:C:1988:61, paragraph 25).

53 Accordingly, a judgment entered in one Member State in the terms of an arbitral award is capable of constituting a 'judgment', within the meaning of Article 34(3) of Regulation No 44/2001, which prevents the recognition, in that Member State, of a judgment given by a court in another Member State if those two judgments are irreconcilable.

54 However, the position is different where the award in the terms of which that judgment was entered was made in circumstances which would not have permitted the adoption, in compliance with the provisions and fundamental objectives of that regulation, of a judicial decision falling within the scope of that regulation.

55 In that regard, it should be borne in mind that, in interpreting a provision of EU law, it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part. Account should therefore be taken, for the purposes of answering the first and second questions referred, of not only the wording and the objective of Article 34(3) of Regulation No 44/2001 but also the context of that provision and all of the objectives pursued by the regulation (see, to that effect, judgment of 4 May 2010, *TNT Express Nederland*, C-533/08, EU:C:2010:243, paragraph 44 and the case-law cited).

56 Those objectives are reflected in the principles which underlie judicial cooperation in civil matters in the European Union, such as the principles of free movement of judgments in civil matters, predictability as to the courts having jurisdiction and therefore legal certainty for litigants, sound administration of justice, minimisation of the risk of concurrent proceedings, and mutual trust in the administration of justice (see, to that effect, judgments of 4 May 2010, *TNT Express Nederland*, C-533/08, EU:C:2010:243, paragraph 49, and of 19 December 2013, *Nipponka Insurance*, C-452/12, EU:C:2013:858, paragraph 36).

57 It should be added that the mutual trust in the administration of justice in the European Union, on which, according to recital 16 of Regulation No 44/2001, the rules laid down in that regulation concerning the recognition of judgments are based, does not extend to decisions made by arbitral tribunals or to judicial decisions entered in their terms.

58 It follows that an arbitral award can, by means of a judgment entered in the terms of that award, produce effects in the context of Article 34(3) of Regulation No 44/2001 only if this does not infringe the right to an effective remedy guaranteed in Article 47 of the Charter of Fundamental Rights of the European Union (see, to that effect, judgment of 25 May 2016, *Meroni*, C-559/14, EU:C:2016:349, paragraph 44) and enables the objectives of the free movement of judgments in civil matters and of mutual trust in the administration of justice in the European Union to be achieved under conditions at least as favourable as those resulting from the application of Regulation No 44/2001 (see, by analogy, judgments of 4 May 2010, *TNT Express Nederland*, C-533/08, EU:C:2010:243, paragraph 55, and of 19 December 2013, *Nipponka Insurance*, C-452/12, EU:C:2013:858, paragraph 38).

59 In the present case, it should be noted that the content of the arbitral award at issue in the main proceedings could not have been the subject of a judicial decision falling within the scope of Regulation No 44/2001 without infringing two fundamental rules of that regulation concerning, first, the relative effect of an arbitration clause included in an insurance contract and, secondly, *lis pendens*.

60 As regards, first, the relative effect of an arbitration clause included in an insurance contract, it is apparent from the case-law of the Court that a jurisdiction clause agreed between an insurer and an insured party cannot be invoked against a victim of insured damage who, where permitted by national law, wishes to bring an action directly against the insurer, in tort, delict or quasi-delict, before the courts for the place where the harmful event occurred or before the courts for the place where the victim is domiciled (see, to that effect, judgment of 13 July 2017, *Assens Havn*, C-368/16, EU:C:2017:546, paragraphs 31 and 40 and the case-law cited).

61 It follows that, to avoid that right of the victim being undermined, a court other than that already seised of that direct action should not declare itself to have jurisdiction on the basis of such an arbitration clause, the aim being to guarantee the objective pursued by Regulation No 44/2001, namely the protection of injured parties vis-à-vis the insurer concerned (see, to that effect, judgment of 13 July 2017, *Assens Havn*, C-368/16, EU:C:2017:546, paragraphs 36 and 41).

62 That objective of protecting injured parties would be compromised if a judgment entered in the terms of an arbitral award by which an arbitral tribunal declared itself to have jurisdiction on the basis of such an arbitration clause, included in the insurance contract concerned, could be regarded as a 'judgment given in a dispute between the same parties in the Member State in which recognition is sought', within the meaning of Article 34(3) of Regulation No 44/2001.

63 As the circumstances of the dispute in the main proceedings illustrate, to accept that such a judgment may prevent the recognition of a judgment given in another Member State following a direct action for damages brought by the injured party would be liable to deprive that party of effective compensation for the damage suffered.

64 Secondly, as regards *lis pendens*, it is apparent from the order for reference that, on the date on which the arbitration proceedings were commenced, that is to say 16 January 2012, proceedings were already pending before the Spanish courts between, amongst others, the Spanish State and the London P&I Club.

65 Furthermore, it is apparent from the documents before the Court that the civil claims brought before the Spanish courts had been notified to the London P&I Club in June 2011 and that the Kingdom of Spain was invited, by the sole arbitrator, to participate in the arbitration proceedings initiated by the London P&I Club in London.

66 Since Article 27(1) of Regulation No 44/2001 refers to 'proceedings … between the same parties', without requiring effective participation in the proceedings in question, it must be concluded that the same parties were involved in the proceedings referred to in paragraph 64 above (see, to that effect, judgment of 19 October 2017, *Merck*, C-231/16, EU:C:2017:771, paragraphs 31 and 32).

67 Lastly, those proceedings involved the same cause of action, namely the London P&I Club's potential liability in respect of the Spanish State, under the insurance contract concluded between the London P&I Club and the owners of the *Prestige*, for the damage caused by the sinking of that vessel.

68 In that connection, the Court has held, in relation to the interpretation of Article 27(1) of Regulation No 44/2001, that an action seeking to have the defendant held liable for causing loss and ordered to pay damages has the same cause of action as an action brought by that defendant seeking a declaration that he or she is not liable for that loss (see, to that effect, judgments of 19 December 2013, *Nipponka Insurance*, C-452/12, EU:C:2013:858, paragraph 42, and of 20 December 2017, *Schlömp*, C-467/16, EU:C:2017:993, paragraph 51). In the present case, the civil claims brought in Spain had the aim, inter alia, of having the

London P&I Club declared liable in that Member State, while the arbitration proceedings in London were initiated by the London P&I Club with the aim of obtaining a negative declaration regarding that liability.

69 Such circumstances amount to a situation of *lis pendens* in which, in accordance with Article 27 of Regulation No 44/2001, any court other than the court first seised must of its own motion stay its proceedings until such time as the jurisdiction of the court first seised has been established and then, where the jurisdiction of the court first seised is established, decline jurisdiction in favour of that court.

70 As noted in paragraph 56 above, the minimisation of the risk of concurrent proceedings, which that provision is intended to achieve, is one of the objectives and principles underlying judicial cooperation in civil matters in the European Union.

71 It is for the court seised with a view to entering a judgment in the terms of an arbitral award to verify that the provisions and fundamental objectives of Regulation No 44/2001 have been complied with, in order to prevent a circumvention of those provisions and objectives, such as a circumvention consisting in the completion of arbitration proceedings in disregard of both the relative effect of an arbitration clause included in an insurance contract and the rules on *lis pendens* laid down in Article 27 of that regulation. In the present case, it is apparent from the documents before the Court and from the hearing that no such verification took place either before the High Court of Justice (England & Wales), Queen's Bench Division (Commercial Court), or before the Court of Appeal (England & Wales) (Civil Division) and, moreover, that neither of those two courts made a reference to the Court for a preliminary ruling under Article 267 TFEU.

72 In such circumstances, a judgment entered in the terms of an arbitral award, such as that at issue in the main proceedings, cannot prevent, under Article 34(3) of Regulation No 44/2001, the recognition of a judgment from another Member State.

73 In the light of the foregoing, the answer to the first and second questions is that Article 34(3) of Regulation No 44/2001 must be interpreted as meaning that a judgment entered by a court of a Member State in the terms of an arbitral award does not constitute a 'judgment', within the meaning of that provision, where a judicial decision resulting in an outcome equivalent to the outcome of that award could not have been adopted by a court of that Member State without infringing the provisions and the fundamental objectives of that regulation, in particular as regards the relative effect of an arbitration clause included in an insurance contract and the rules on *lis pendens* contained in Article 27 of that regulation, and that, in that situation, the judgment in question cannot prevent, in that Member State, the recognition of a judgment given by a court in another Member State.

The third question

74 By its third question, the referring court asks, in essence, whether Article 34(1) of Regulation No 44/2001 must be interpreted as meaning that, in the event that Article 34(3) of that regulation does not apply to a judgment entered in the terms of an arbitral award, the recognition or enforcement of a judgment from another Member State may be refused as being contrary to public policy on the ground that it would disregard the force of *res judicata* acquired by the judgment entered in the terms of an arbitral award.

75 In that regard, it follows from the answer to the first two questions that, in the present case, the inapplicability of Article 34(3) of Regulation No 44/2001 to the judgment referred to in paragraph 29 above results from the fact that the arbitral proceedings which gave rise to the award confirmed by that judgment were completed in breach of the rules on *lis pendens* laid down in Article 27 of that regulation and the relative effect of an arbitration clause included in the insurance contract in question.

76 In those circumstances, it cannot be considered that the alleged disregard of that judgment by the enforcement order of 1 March 2019, referred to in paragraph 34 above, which was made in proceedings which that judgment itself failed to take into account, could constitute a breach of public policy in the United Kingdom.

77 In any event, according to the case-law of the Court, Article 34(1) of Regulation No 44/2001 must be interpreted strictly inasmuch as it constitutes an obstacle to the attainment of one of the fundamental objectives of that regulation. It may therefore be relied upon only in exceptional cases (judgment of 25 May 2016, *Meroni*, C-559/14, EU:C:2016:349, paragraph 38 and the case-law cited).

78 The Court has already held that the use of the 'public-policy' concept is precluded when the issue is whether a foreign judgment is compatible with a national judgment (judgment of 4 February 1988, *Hoffmann*, 145/86, EU:C:1988:61, paragraph 21).

79 As the Advocate General pointed out in point 77 of his Opinion and as the French Government observed, the EU legislature intended to regulate exhaustively the issue of the force of *res judicata* acquired by a judgment given previously and, in particular, the question of the irreconcilability of the judgment to be recognised with that earlier judgment by means of Article 34(3) and (4) of Regulation No 44/2001, thereby excluding the possibility that recourse be had, in that context, to the public-policy exception set out in Article 34(1) of that regulation.

80 In the light of the foregoing, the answer to the third question is that Article 34(1) of Regulation No 44/2001 must be interpreted as meaning that, in the event that Article 34(3) of that regulation does not apply to a judgment entered in the terms of an arbitral award, the recognition or enforcement of a judgment from another Member State cannot be refused as being contrary to public policy on the ground that it would disregard the force of *res judicata* acquired by the judgment entered in the terms of an arbitral award.

Costs

81 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

1. **Article 34(3) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that a judgment entered by a court of a Member State in the terms of an arbitral award does not constitute a 'judgment', within the meaning of that provision, where a judicial decision resulting in an outcome equivalent to the outcome of that award could not have been adopted by a court of that Member State without infringing the provisions and the fundamental objectives of that regulation, in particular as regards the relative effect of an arbitration clause included in the insurance contract in question and the rules on *lis pendens* contained in Article 27 of that regulation, and that, in that situation, the judgment in question cannot prevent, in that Member State, the recognition of a judgment given by a court in another Member State.**

2. **Article 34(1) of Regulation No 44/2001 must be interpreted as meaning that, in the event that Article 34(3) of that regulation does not apply to a judgment entered in the terms of an arbitral award, the recognition or enforcement of a judgment from another Member State cannot be refused as being contrary to public policy on the ground that it would disregard the force of *res judicata* acquired by the judgment entered in the terms of an arbitral award.**

Lenaerts Bay Larsen Jürimäe

Lycourgos	Regan	Jarukaitis
Jääskinen	Ilešič	Bonichot
Safjan	Kumin	Arastey Sahún
Gavalec	Csehi	Spineanu-Matei

Delivered in open court in Luxembourg on 20 June 2022.

A. Calot Escobar	K. Lenaerts
Registrar	President

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* Language of the case: English.